

## Federal Acquisition Regulation

37.201

not obvious to third parties are required to identify themselves as such to avoid creating an impression in the minds of members of the public or Congress that they are Government officials, unless, in the judgment of the agency, no harm can come from failing to identify themselves. They must also ensure that all documents or reports produced by contractors are suitably marked as contractor products or that contractor participation is appropriately disclosed.

[61 FR 2630, Jan. 26, 1996]

### 37.115 Uncompensated overtime.

#### 37.115-1 Scope.

The policies in this section are based on Section 834 of Public Law 101-510 (10 U.S.C. 2331).

[62 FR 44815, Aug. 22, 1997]

#### 37.115-2 General policy.

(a) Use of uncompensated overtime is not encouraged.

(b) When professional or technical services are acquired on the basis of the number of hours to be provided, rather than on the task to be performed, the solicitation shall require offerors to identify uncompensated overtime hours and the uncompensated overtime rate for direct charge Fair Labor Standards Act—exempt personnel included in their proposals and subcontractor proposals. This includes uncompensated overtime hours that are in indirect cost pools for personnel whose regular hours are normally charged direct.

(c) Contracting officers must ensure that the use of uncompensated overtime in contracts to acquire services on the basis of the number of hours provided will not degrade the level of technical expertise required to fulfill the Government's requirements (see 15.305 for competitive negotiations and 15.404-1(d) for cost realism analysis). When acquiring these services, contracting officers must conduct a risk assessment and evaluate, for award on that basis, any proposals received that reflect factors such as:

(1) Unrealistically low labor rates or other costs that may result in quality or service shortfalls; and

(2) Unbalanced distribution of uncompensated overtime among skill levels and its use in key technical positions.

[62 FR 44815, Aug. 22, 1997, as amended at 64 FR 51842, Sept. 24, 1999]

#### 37.115-3 Solicitation provision.

The contracting officer shall insert the provision at 52.237-10, Identification of Uncompensated Overtime, in all solicitations valued above the simplified acquisition threshold, for professional or technical services to be acquired on the basis of the number of hours to be provided.

[62 FR 44815, Aug. 22, 1997]

## Subpart 37.2—Advisory and Assistance Services

SOURCE: 60 FR 49722, Sept. 26, 1995, unless otherwise noted.

### 37.200 Scope of subpart.

This subpart prescribes policies and procedures for acquiring advisory and assistance services by contract. The subpart applies to contracts, whether made with individuals or organizations, that involve either personal or nonpersonal services.

### 37.201 Definition.

*Covered personnel* means—

(1) An officer or an individual who is appointed in the civil service by one of the following acting in an official capacity:

- (i) The President;
  - (ii) A Member of Congress;
  - (iii) A member of the uniformed services;
  - (iv) An individual who is an employee under 5 U.S.C. 2105;
  - (v) The head of a Government-controlled corporation; or
  - (vi) An adjutant general appointed by the Secretary concerned under 32 U.S.C. 709(c).
- (2) A member of the Armed Services of the United States.